IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.182 OF 1995

Uday Shankar Kale
Adult, Occ: Service,
R/o Masoba Nagar, Zopadpatti,
Thakurli, Tal. Kalyan,
Dist. Thane. ..Appellant (Ori.Accused)

Versus

1. State
2. Manik Kuppuswami Mudaliar
3. Vimal Manik Mudaliar
Both r/o Thakurli, Masoba Nagar, Zopadpatti, Tal. Kalyan, Dist.Thane. ..Respondents (Ori.Complainant and his wife)

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Mr.A.S.Rao, Advocate for the Appellant
Mr.B.H.Mehta, A.P.P. for the State.
None appears for respondent nos.2 and 3.

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 1,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant challenges the judgment and order dated 7th April, 1995, passed by the learned IVth Additional Sessions Judge, Thane in Sessions Case No. 81 of 1989. By the said judgment and order, the appellant came to be convicted for the offence under Sections 452, 307 for causing injuries to P.W.Manik Mudaliar and under

Section 324 of IPC for causing injuries to P.W.3 Vimal Mudaliar. For the offence under Section 452 of IPC, he was sentenced to undergo R.I. for three years and to pay a fine of Rs.1,000/- in default to suffer R.I. for six months. For the offence under Section 307 of IPC, he was sentenced to R.I. for five years and to pay a fine of Rs.2,000/- in default R.I. for one year. For the offence under Section 324 of IPC, he was sentenced to R.I. for one year and to pay a fine of Rs.1000/- in default R.I. for six months.

2. Briefly stated the prosecution case is as under:

. P.W.1 Complainant-Manik Mudaliar was residing at Mouje Thakurli, Masoba Nagar Zopadpatti in District Thane. His house is close to the house of the appellant. There was an illicit relationship between the mother of the appellant and Manik Mudaliar. On account of this, the appellant had warned Manik Mudaliar not to come to the house of appellant. Two days prior to the incident, Manik Mudaliar had gone to the house of the appellant. On account of this, the sister of the appellant, lodged complaint against Manik Mudaliar at the police station vide C.R.No. 368 of 1988 under Sections 451, 323 and 504 of IPC.

. It is further the prosecution case that on 5th October, 1988 at about 9 p.m. Manik Mudaliar was in his house. At that time, the appellant entered into his house, took out a knife from his pocket and stabbed Manik Mudaliar. P.W.3 Vimal Mudaliar the wife of Manik Mudaliar intervened. She also received injuries in the scuffle. Thereafter, Manik Mudaliar was taken to the hospital. At the hospital, his statement (Exhibit-16) came to be recorded. On the basis of said statement, offence came to be registered. Thereafter, the investigation was carried out. After completion of investigation, the charge-sheet came to be filed.

3. In due course, case came to be committed to the Court of Sessions for trial. Charge came to be framed against the appellant under Sections 452, 307 and 324 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. It is the defence of the appellant that there was an illicit affair between Manik Mudaliar and the mother of the appellant. This fact was not liked by the appellant and his sister. On the day of incident, Manik had been to the house of the appellant. At that time, the appellant and his sister were not at home. At about 8.30 p.m. the appellant came home and saw

Manik Mudaliar sitting with the mother of the appellant. On seeing the appellant, Manik ran away to his house and appellant chased Manik till the house of Manik. The appellant asked him as to why he had gone to the house of appellant despite repeated warnings. Manik Mudaliar is well known criminal having many cases registered against him. It is further the case of the appellant that Manik Mudaliar took out a knife from beneath mattress and attempted to stab the appellant. During the scuffle, Manik Mudaliar as well as appellant sustained injuries. The learned Sessions Judge has disbelieved this defence. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant as mentioned in para no.1 of this judgment. Hence, this appeal.

4. I have heard Mr.A.S.Rao, the learned advocate for the appellant and Mr.B.H.Mehta, the learned A.P.P. for the State. I have also perused the entire material on record as well as the judgment and order of the learned Sessions Judge. After utmost circumspection, I have reached the conclusion that the conviction of the appellant under Section 307 of IPC for causing injuries to Manik deserves to be set aside.

5. The conviction of the appellant has been mainly based on the evidence of P.W.1 Manik Mudaliar and P.W.3 Vimal Mudaliar. P.W.1 Manik Mudaliar is the complainant in the present case and also an injured witness. He has stated that on 5th October, 1988 at about 9 p.m. he was in his house, at that time, appellant came to his house and stabbed him. Thereafter, he was taken to the hospital where the police recorded his statement. In his cross-examination, Manik Mudaliar has admitted that he has faced large number of prosecutions in the past and he has even been convicted in some of the cases. Manik Mudaliar has admitted that in the year 1975, he was prosecuted by Ramnagar Police Station, Dombivali in three to four cases. In the year 1978-79, he was prosecuted for the offence under Sections 324 and 326 of IPC in four different cases. In between the period from 1982 to 1987, four cases had been registered against him. He has further admitted that he was externed on one occasion in the year 1984 and two chapter cases were also pending against him.

6. He has further admitted that the sister of the appellant had lodged a complaint against him under Sections 451, 323 and 504 of IPC vide C.R.No. 368

of 1988. The said complaint was lodged about 2 to 3 days prior to the incident. This complaint had been lodged on account of Manik Mudaliar entering into the house of appellant and meeting mother of the appellant.

7. Though Manik Mudaliar has denied an illicit relation-ship with the mother of the appellant, however, this denial does not inspire confidence in view of the fact that he has admitted that the sister of the appellant had lodged complaint against him a couple of days prior to the date of the incident for having committed trespass in her house. Though the wife of Manik Mudaliar feigned ignorance regarding the fact that her husband i.e. Manik Mudaliar was having illicit relation-ship with the mother of the appellant, however, when she was confronted with her statement made to the police that Manik Mudaliar had illicit relation-ship with the mother of the appellant, she was unable to give any explanation. Moreover, this contradiction has been proved through Investigation Officer i.e. Deputy Commissioner of Police Shri.Shinde (P.W.8). As per the prosecution, this is the motive behind the crime. It is natural that the complainant Manik Mudaliar would deny the fact that he was having an affair with the mother of the appellant because no

one would openly admit such fact. However, despite his denial, I find much substance in the submission made on behalf of the appellant that Manik Mudaliar had illicit relations with the mother of the appellant and that appellant and his sister had warned Mudaliar that he should not come to their house. The fact that Manik Mudaliar was having affair with the mother of the appellant, has been brought on record in the evidence of P.W.3 Vimal and P.W.8 Shinde, D.C.P. In fact, P.W.8 Shinde has categorically stated that "it is true that there was an illicit relation-ship between the mother of the accused and the complainant". From all the above facts, it is clear that there was an illicit relation in between Manik and the mother of the appellant, however, there is nothing else in the cross-examination of Manik Mudaliar which would discredit his testimony on the aspect of actual assault by the appellant on him. Suggestion was given to Manik Mudaliar that on 5.10.1988 at about 8.30 p.m. he was sitting in the house of appellant and when the appellant came to his house, he started running away. The appellant chased Manik Mudaliar till the house of Manik and asked him as to why he came to his house despite repeated warnings. At that time, Manik Mudaliar took out a knife to assault the appellant. A scuffle took place between

them in which Manik Mudaliar and his wife received injuries when she tried to intervene. However, all these suggestions have been denied by Manik Mudaliar. Obviously, suggestions which are denied, have no evidentiary value unless it can be shown from the other material on record that denials are patently false. Barring these suggestions, there is nothing in the cross examination of Manik Mudaliar on the point of incident. The evidence of Manik Mudaliar on the point of incident is fully supported by the evidence of his wife P.W.3 Vimal Mudaliar. As far as the incident is concerned, there is nothing in the cross-examination of P.W.3 Vimal so as to discredit her testimony that the appellant assaulted her husband with knife and that she also received injuries in the said scuffle when she tried to intervene.

8. The prosecution has also examined P.W.5 Chhabu Ashok Kamble. The evidence of Chhabu Kamble lends some support to the prosecution case. P.W.5 Chhabu Kamble has deposed that on 5.10.1988, she heard commotion near her house and at that time, Manik Mudaliar was lying near the statue of Ambedkar. The appellant was standing near Manik Mudaliar with a knife in his hand. There is nothing in the cross examination of this witness so as to disbelieve her

testimony.

9. The versions of Manik Mudaliar and his wife Vimal are again corroborated by certain circumstances i.e. by way of recovery of knife Article 4, at the instance of the appellant. In the present case, knife article-4 was recovered at the instance of the appellant. It is true that panch witness P.W.6 Mirza Umar Mirza Aziz has turned hostile and he has not supported the prosecution case. However, in my opinion, merely because panch witness has not supported the prosecution case, it is not necessary to view the evidence of Investigating Officer with suspicion. P.W.8 D.C.P. Mr.Shinde, has also deposed about the aspect of recovery of knife at the instance of the appellant. The said knife had been kept by the appellant in his house and it came to be recovered at his instance from his house. The said knife was sent to C.A. and as per the C.A. report (Exhibit-32) human blood was found on the knife. No explanation has been forthcoming from the appellant for finding human blood stains on the knife. Thus, the recovery of blood-stained knife at the instance of appellant, lends corroboration to the prosecution case.

10. After Manik Mudaliar was injured, he was taken

to the hospital and he was examined at the hospital. P.W.7 Dr.Jayashree Sanjay Pandya and P.W.11 Dr.Dilip Mahadeo Thakur are the two Doctors who have deposed about the injuries on the person of Manik Mudaliar. Manik Mudaliar was first taken to Laxmi Hospital at Dombivli where one Dr.Panchpande examined him and found following injuries on his person:

1. Incise cut wound, on the left side of the chest over tenth rib, admeasuring about 2" x 1" x 1".

2. Incise cut wound, to the right side of the chest over 11th rib, admeasuring 1" x 1/2" x 1".

3. Incise cut wound on the right side of the chest, near auxiliary region, 1-1/2" x 1" x 1/2".

4. Incise cut wound, close to the third rib, 1/2" x 1/2".

5. C.L.W. over sternum 1/2" x 1/2".

6. Incise cut wound on the back side 1" x 1/2".

7. Incise cut wound over right elbow, 1-1/2" x 1".

. However, it is pertinent to note that Dr.Panchpande has not been examined and Dr.Dilip Thakur has been examined on the aspect of injuries to Manik, Dr.Thakur has deposed on the basis of record. Dr.Thakur has stated that all the injuries were recent and they were inflicted by sharp and

cutting weapons. The injuries are possible by knife article-4. Dr.Thakur has admitted that he had not personally examined the patient and he has deposed on the strength of the case papers which were in his hospital. It is pertinent to note that nowhere, in the evidence of Doctor, has the Doctor stated that the injuries to Manik Mudaliar were serious or grievous. In fact, even on being specifically asked regarding gravity of the injuries to Manik, Dr.Thakur has stated that without seeing the x-ray plates, the gravity of the injuries cannot be ascertained. In the present case, it is nobody's case that Manik Mudaliar had suffered any fractures. Thus, from the evidence of P.W.11 Dr.Dilip Thakur, there is nothing to show that the injuries suffered by Manik Mudaliar were in any way, serious or grievous.

11. From Laxmi Hospital Dombivli, Manik Mudaliar was shifted to K.E.M.Hospital, Mumbai. P.W.7 Jayashree Pandya has deposed on this aspect. Dr.Pandya has stated that injured was admitted on 6.10.1988 and was discharged on 31.10.1988. Dr.Pandya has stated that she is deposing on the basis of record. However, the record Exhibit-30 does not show that Manik Mudaliar was discharged on 31.10.1988. Thus, there is nothing reliable on

record to show that Manik was discharged on 31.10.1998.

12. Dr.Pandya has stated that when Manik Mudaliar came to the hospital, wounds of Manik were sutured. Dr.Pandya stated that injuries were grievous and had the patient not received timely medical aid, the injuries would have proved to be fatal. However, from the record (Exhibit-30) there is nothing to show that injuries of Manik Mudaliar were grievous. Dr.Pandya has further deposed that from the sutured injuries, depth of the injuries cannot be said, however, the injuries were on vital part. In the cross-examination, she has again admitted that she is only deposing on the basis of the papers. Thus, from the evidence of Dr.Pandya, it cannot be said to be conclusively proved that injuries caused by the appellant to Manik Mudaliar were such as to fall under Section 307 of IPC. No doubt, some of the injuries were on vital parts of body. However, from the medical record as well as evidence of these two Doctors, in my opinion, the prosecution has failed to prove that injuries caused to Manik Mudaliar by the appellant fell within the ambit of Section 307 of IPC. In this view of the matter, the conviction of the appellant under Section 307 of IPC for causing injuries to Manik Mudaliar deserves to be

set aside. In my view, instead of Section 307, the appellant deserves to be convicted for the offence under Section 324 of IPC for causing injuries to Manik.

13. From the evidence on record, it is clear that in the scuffle when P.W.3 Vimal tried to intervene, she also received injuries. P.W.9 Dr.Ashok Bhide examined P.W.3 Vimal Mudaliar and he found following injuries on her person:

> 1. Incise wound on middle of back 1"x1"x2"1/4". There was bleeding from it.
>
> 2. Incise wound on lower part of back. 1"x1"x1/2" bleeding present.
>
> 3. Incise wound 2" below injury no.2. 1"x1/2"x1/4" bleeding present.
>
> 4. Incise wound left side of buttock upper part 1-1/4" x 1/2" bleeding present.

. Dr.Bhide deposed that all the injuries were caused by sharp object. The age of the injuries was within six hours. From the evidence on record, it is clear that the appellant had caused these injuries by knife to Vimal in the scuffle. In respect of this, the learned Sessions Judge has convicted the appellant under Section 324 of IPC.

In view of the evidence on record, the said conviction is proper and deserves to be maintained.

14. The evidence on record also shows that the appellant had entered into house of Manik Mudaliar and caused injuries to him. This fact is borne out from the evidence of P.W.1 Manik Mudaliar and P.W.3 Vimal Mudaliar. It is also supported by the panchnama relating to the spot of incident, wherein some blood stains were found in the house of Manik Mudaliar. Panch witness P.W.2 Ashok Kamble has deposed on this aspect. Thus prosecution has clearly made out a case under Section 452 of IPC against the appellant.

15. Thus, there is enough material to show that the appellant has committed offence under Sections 452 and 324 of IPC. I have already observed earlier that the learned Sessions Judge has rightly convicted the appellant under Section 324 of IPC for causing injuries to P.W.3 Vimal and under Section 452 of IPC for committing house trespass in the house of Manik Mudaliar after preparation for causing hurt or assault. However, looking to the evidence on record, in my view, the conviction under Section 307 of IPC for causing injuries to Manik Mudaliar is not called for. For the said act, the

appellant deserves to be convicted for the offence under Section 324 of IPC instead of an offence under Section 307 of IPC.

16. From the evidence on record as well as from the judgment of the learned Sessions Judge, it is clear that there was no adverse record against the appellant. In fact, the complainant i.e. injured witness Manik Mudaliar was a known criminal. He was involved in a large number of cases. The evidence on record specially that of D.C.P.-P.W.8 Shinde shows that Manik Mudaliar was having an affair with the mother of the appellant. Obviously, this was not liked by the appellant and therefore, this incident had taken place. Manik has admitted that just two days prior to the incident, C.R.No. 368 of 1988 was lodged by sister of appellant against him i.e. Manik. This shows that even when the fact that Manik visited the house of the appellant and met his mother, was not liked by the appellant and his sister yet Manik Mudaliar continued to do so which led to the registration of the above crime i.e. C.R.No. 368 of 1988. This has led to the incident taking place.

17. On the point of sentence, the learned advocate for the appellant has submitted that the incident

had occurred in the year 1988. Almost more than 16 years have passed thereafter. Other family members of the appellant are dependent on him. Thus, he has submitted that sentence imposed on the appellant may be reduced to the extent of period which is already undergone by the appellant.

18. In view of this submission and looking to the earlier mentioned facts and circumstances of this case, I am inclined to reduce the sentence of imprisonment to the extent of period of imprisonment which is already undergone by the appellant for the offence under Section 452 and 324 of IPC for causing injuries to P.W.2 Vimal and for offence under Section 324 of IPC for causing injuries to Manik Mudaliar.

19. In view of the above, the judgment and order of conviction dated 7th April, 1995 passed by the learned IVth Additional Sessions Judge, Thane, in Sessions Case No.81 of 1989, for the offence under Sections 452 and 324 of IPC for causing injuries to P.W.2 Vimal, is confirmed. However, conviction of the appellant under Section 307 of IPC for causing injuries to Manik is set aside and instead the appellant is convicted for the offence under Section 324 of IPC and he is sentenced to imprisonment for

the period which is already undergone by the appellant. The sentence imposed on the appellant for the offence under Sections 452 and 324 for causing injuries to P.W.2 Vimal, is also reduced to the period of imprisonment which is already undergone by the appellant. The rest of the judgment and order of the learned Sessions Judge is confirmed. The appellant is on bail. His bail bonds shall stand cancelled. Appeal is partly allowed in the above terms.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.182 OF 1995
(Uday Shankar Kale Vs. The State of Maharashtra and Anr.)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	Mr. A.S.Rao, Advocate for Appellant Mr.B.H.Mehta, A.P.P. for State None appears for respondent nos.2 and 3.

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 1, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. The judgment and order of conviction dated 7th April, 1995 passed by the learned IVth Additional Sessions Judge, Thane, in Sessions Case No.81 of 1989, for the offence under Sections 452 and 324 of IPC for causing injuries to P.W.2 Vimal, is confirmed. However, conviction of the appellant under Section 307 of IPC for causing injuries to Manik is set aside and instead the appellant is convicted for the offence under Section 324 of IPC and he is sentenced to imprisonment for the period which is already undergone by the appellant. The sentence imposed on the appellant for the offence under Sections 452 and 324 for causing injuries to P.W.2 Vimal, is also reduced to the period of imprisonment which is already undergone by the appellant. The rest of the judgment and order of the learned Sessions Judge is confirmed. The appellant is on bail. His bail bonds shall stand cancelled. Appeal is partly allowed in the above terms.

(V.K.TAHILRAMANI,J.)